IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 26TH OCTOBER 2007 / 4TH KARTHIKA 1929

Crl.MC.No. 3289 of 2007()

AGAINST THE ORDER IN MP 3067/2007 IN
CC.1029/2004 of JUDL. MAGISTRATE OF FIRST CLASS COURT, KUNNAMKULAM

.....

PETITIONER: ACCUSED

K.M.SULAIMAN, S/O K.S.MOOSA VAIDYAR,
KUNNAKKAD HOUSE, P.O.PUTHUSSERY,
PALAKKAD DIST.(WINTHIN PUTHUSSERY P.S.)

BY ADV. SRI.SHEJI P.ABRAHAM

RESPONDENTS: COMPLAINANT/STATE

---

1. T.KADAR, AGED 60,
S/O AHAMMU, THALIKASSERY VEEDU,
NAYARANGADI P.O., JAMANANGAD, CHAVAKKAD TALUK,
THRISSUR DISTRICT.

2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 26/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.3289 of 2007

Dated this the 26th day of October 2007

O R D E R

The petitioner faces indictment in a prosecution under Section 138 of the Negotiable Instruments Act. The complaint was filed in 2004 and has at long last reached the stage of defence evidence. The petitioner wanted the cheque to be sent to the expert at the defence stage. Application was opposed. By the impugned order, the learned Magistrate dismissed the application.

2. The petitioner claims to be aggrieved by the impugned order. He wants the powers under Section 482 Cr.P.C to be invoked to quash the impugned order.

3. The powers under Section 482 Cr.P.C are o be invoked sparingly and in exceptional cases in aid of justice. Normally and ordinarily, a litigant has to wait for the completion of the proceedings to challenge the orders passed in interlocutory applications. In an exceptional case in the interests of justice, this court does certainly have the power to

interfere even with an interlocutory order. But exceptional facts must be shown to exist. Otherwise, the challenge will have to wait till the final order is pronounced and such challenge will have to be along with the challenge against the final order. The notice of demand under Section 138 of the Negotiable Instruments Act was admittedly not replied to. The complainant's evidence has been read over to me. The complainant has no case that other than the signature, any writings in the cheque were made in his presence. The assertion of the complainant is only that the signature was affixed in his presence. Why then does the petitioner want the cheque to be sent to the expert? The petitioner also admits that the signature is his. There is no evidence tendered about the author of the other writings in the cheque. In these circumstances, sending the cheque to the expert does appear to me to be a fruitless, time consuming and unnecessary effort. At any rate, I am not persuaded to invoke the powers under Section 482 Cr.P.C to interfere with the impugned order.

4. I should not be reckoned as having finally pronounced on the correctness of the impugned order. I have only chosen to

take the view that the powers under Section 482 Cr.P.C do not deserve to be invoked to interfere with the impugned order pending the proceedings. The petitioner's option to challenge the order, if he thinks it worthwhile and necessary, along with the final order to be passed in the prosecution by the learned Magistrate shall remain unfettered.

5. This petition is in these circumstances dismissed.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007